

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12045 of 2004

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHOGILAL C PATEL

Versus

UNITED INDIA INSURANCE COMPANY LTD.

Appearance:

1. Special Civil Application No. 12045 of 2004
MR YN RAVANI for Petitioner No. 1
MR PV NANAVALI for Respondent No. 1
MR VIBHUTI NANAVALI for Respondent No. 1

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 11/02/2005

ORAL JUDGEMENT

Rule.

Service of Rule is waived by learned Advocate Mr.P.V.Nanavati for respondent-United India Insurance Co. Ltd., (Insurance Co.). Upon joint request and considering the urgency in the issue, the matter is taken up today for final hearing.

2. A short question, which emerges for consideration in this petition under Article 226 of the Constitution of India is with regard to the scheme, which is known as Cost Based Growth Incentive (C.B.G.I), which is a part of provisions of General Insurance (Rationlisation of Pay Scales and other Conditions of Services of Development of Staff) (Amendment) Scheme 1997. The petitioner was informed by a letter dated 14/5/2003, that the Cost Based Growth Incentive paid to him for the years 1998-99, 1999-2000 shall be reduced and deducted.

3. Petitioner joined the service as Development Officer of Respondent-Insurance Co. on 1/9/1977 and he had applied for voluntary retirement, which was accepted by the Respondent-Company. On 15/5/2003, petitioner was paid ex-gratia payment of retirement benefits, which came to be deducted and the amount given by them was accepted by the petitioner under protest. Such a process of deduction was made without giving an opportunity of being heard to the petitioner and thereby the petitioner has lost in all Rs.2,93,946/-. That is the reasons why the petitioner had immediately written a letter on 16/5/2003 to the Respondent-Company in this regard and raising question about the right of recovery and that too without affording an opportunity of hearing to explain the same to the petitioner, which remained unresponded.

4. Petitioner again made representation to the Respondent-Authority on 18/6/2003. At this stage petitioner came to be given a copy of Audit Report dated 12th May, 2003, that the Division Manager of the concerned branch, where the petitioner was working was to give explanation about certain queries but he did not gave any reply, therefore, the petition came to be filed. Again petitioner issued notice on 2/2/2004 questioning the legality of illegal recovery, which also unfortunately remained without any response from the Respondent-Insurance Co.

5. It becomes, therefore, very clear from the record of the present petition, that the recovery of Cost Based Growth Incentive paid to the petitioner as Development Officer has been questioned in this petition, on the ground the initiation of the process of recovery without giving an opportunity of hearing to the petitioner is

violative of principles of natural justice, as well as, it is discriminatory, since such a process has not been initiated against other similarly situated persons and officers.

6. This Court has heard the learned Advocates Mr.Ravani for the petitioner and Mr.Nanavati for the Respondent-Insurance Co. The Respondent-Company has not filed written objections or affidavit-in-reply. The entire factual profile and the incentive scheme has been examined.

7. It appears clearly from the record, that despite several letters and representations to the Respondent-Insurance Co. the reasons and explanations for recovery of the incentive scheme benefit only from the petitioner out of similarly situated person is only on the ground of Audit Report, whether the Respondent-Insurance Co. could recover or deduct such amounts in such a fashion without observing due process of law or in violation of principles of natural justice, more so, when the proposed recovery for incentive has become a part of the scheme for Development Officer. The petitioner has opted for VRS under VRS Scheme for Development Officer, 2003 and the Respondent-Insurance Co. had accepted the request for VRS of the petitioner and had given the approval for VRS w.e.f 31/3/2003. There is no dispute about the fact that the ex-gratia monetary benefits given to the Development Officer are part and partial of C.B.G.I Scheme, which as such forms part of the provisions of General Insurance Scheme (Rationlisation of Pay Scales and other Conditions of Services of Development of Staff) (Amendment) Scheme 1997.

8. The VRS scheme of the Respondent-Insurance Co. under which, the petitioner had opted for, undoubtedly includes ex-gratia payment. The request for VRS once have been granted by the Respondent-Insurance Co., obviously, the petitioner would be entitled to the ex-gratia payment available and permissible under the scheme of C.B.G.I., which as such forms part of the scheme of 1997, and is a part of the said scheme under which, similarly situated persons have been given but for the audit objection, the petitioner also would have been given.

9. After having been taken into consideration and in absence of written objections or ground or the reasons why objections are raised by the Auditor, the substantial amount of Rs.2,93,946/-, which came to be deducted in the

guise of the audit objection by the Respondent-Insurance Co. and that too without following any procedure and observing the principle of natural justice, audit report wherein objections are contained cannot constitute a launching pad for recovery of ex-gratia payment of Rs.2,93,946/-. Admittedly, when the said amount is forming part of entire VRS Scheme and ex-gratia payment, which is recovered under the C.B.G.I Scheme, which is a part of scheme of 1997 evolved by the Respondent-Insurance Co. and that too, again all the letters written by the petitioner to the Company and the representations remained unresponded.

10. In view of the aforesaid factual profile emerging from the record of the present case and the settled proposition of law, the impugned action of the Respondent-Insurance Co. based on audit objections, which is not sustainable is quite contrary to the underlying design and desideratum of the scheme, which is a part of VRS scheme and General Insurance Scheme, 1997 evolved by the Respondent-Insurance Co.. No other ground for deduction or recovery of the said ex-gratia payment to a person granted VRS scheme is shown and the ground which is taken up or shown for recovery is not sustainable and, therefore, the amount of recovery under the property of Internal Audit Inspection and Report is neither legal nor reasonable as such, such an impugned action of the Respondent-Insurance Co. is contrary to the acts and object of the said scheme of 1997, which a part of VRS Scheme to which, petitioner had opted for and the Company had accepted. The impugned action, therefore, is illegal, arbitrary, discriminatory and contrary to the settled proposition of law in general principles of natural justice in particular. The only option left for this Court in this petition in the light of the peculiar facts and circumstances and admitted facts, the impugned action is quite unsustainable and not legal, therefore, the impugned order of the Respondent-Insurance Co. is quashed and set-aside and the recovery under the C.B.G.I scheme is held to be not legal and permissible only on the basis of Audit Report or objections, which is contrary to the whole scheme. Therefore, petition is required to be allowed quashing the impugned action and directing the Respondent-Insurance Co. to refund or pay the illegal deducted amount on the basis of audit objection on or before 31/3/2005. Petition shall stand allowed. Rule made absolute. However no order as to costs.

(Dr. J. N. Bhatt, J.)

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